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***Via Certified Mail –
Return Receipt Requested***

October 9, 2019

OCT 17 2019

Jack Bebee, General Manager
Members of the Board of Directors
Head of Agency
Fallbrook Public Utility District
990 E. Mission Rd.
Fallbrook, CA 92028-2232

**Re: Notice of Violations and Intent to File Suit Under the Federal Water Pollution
Control Act (Clean Water Act)**

Dear Mr. Bebee, Members of the Board and Head of Agency,

STATUTORY NOTICE

This Notice is provided on behalf of California River Watch (“River Watch”) with regard to violations of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1251 *et seq.*, that River Watch alleges are occurring through the ownership and/or operation of Fallbrook Public Utility District’s Wastewater Treatment Plant (“Facility”) and associated sewer collection system.

River Watch hereby places Fallbrook Public Utility District (“District”), as owner and operator of the Facility and associated sewer collection system, on notice that following the expiration of sixty (60) days from the date of this Notice, River Watch will be entitled under CWA § 505(a), 33 U.S.C. § 1365(a), to bring suit in the U.S. District Court against the District for continuing violations of an effluent standard or limitation pursuant to CWA § 301(a), 33 U.S.C. § 1311(a), and the Regional Water Quality Control Board San Diego Region, Water Quality Control Plan (“Basin Plan”), as the result of violations of the District’s National Pollution Discharge Elimination System (“NPDES”) Permit.

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that all discharges of pollutants are prohibited with the exception of enumerated statutory provisions. One such exception authorizes a discharger, who has been issued a permit pursuant to CWA § 402, 33 U.S.C. § 1342, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in an NPDES permit define the scope of the authorized exception to the CWA § 301(a), 33 U.S.C. § 1311(a) prohibition, such that violation of a permit limit places a discharger in violation of the CWA. River Watch contends the District violates the CWA by violating the terms of its NPDES permit.

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the Environmental Protection Agency (“EPA”) to a state or to a regional regulatory agency, provided that the applicable state or regional regulatory scheme under which the local agency operates satisfies certain criteria (*see* 33 U.S.C. § 1342(b)). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Water Resources Control Board (“SWRCB”) and several subsidiary regional water quality control boards to issue NPDES permits. The entity responsible for issuing NPDES permits and otherwise regulating the District’s operations in the region at issue in this Notice is the Regional Water Quality Control Board San Diego Region (“RWQCB-SD”).

While delegating authority to administer the NPDES permitting system, the CWA provides that enforcement of the statute’s permitting requirements relating to effluent standards or limitations imposed by the Regional Boards can be ensured by private parties acting under the citizen suit provision of the statute (*see* CWA § 505, 33 U.S.C. § 1365). River Watch is exercising such citizen enforcement to enforce compliance by the District with the CWA.

NOTICE REQUIREMENTS

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation, or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

1. The Specified Standard, Limitation, or Order Alleged to Have Been Violated

The order violated is RWQCB-SD Order No. R9-2012-0004, NPDES No. CA0108031, *Waste Discharge Requirements for The Fallbrook Utility District Wastewater Treatment Plant No. 1, Discharge to the Pacific Ocean via the Oceanside Ocean Outfall* (“NPDES Permit”). River Watch has identified specific violations of the District’s NPDES Permit including raw sewage discharges and failure by the District to either comply with or provide evidence that it has complied with all the terms of its NPDES Permit.

2. The Activity Alleged to Constitute a Violation

River Watch contends that from October 1, 2014 to October 1, 2019, the District has violated the Act as described in this Notice. River Watch contends these violations are continuing or have a likelihood of occurring in the future.

A. Sanitary Sewer Overflows, Inadequate Reporting, and Failure to Mitigate Impacts

i. Sanitary Sewer Overflow Occurrences

Sanitary Sewer Overflows (“SSOs”), in which untreated sewage is discharged above-ground from the collection system prior to reaching the Facility are alleged to have occurred both on the dates identified in California Integrated Water Quality System (“CIWQS”) Interactive Public SSO Reports, and on the dates when no reports were filed by the District, all in violation of the CWA.

The District's aging sewer collection system has historically experienced high inflow and infiltration ("I/I") during wet weather. Structural defects which allow I/I into the sewer lines result in a buildup of pressure, causing SSOs. Overflows caused by blockages and I/I result in the discharge of raw sewage into gutters, canals and storm drains which are connected to adjacent surface waters including Ostrich Creek, Fallbrook Creek, the Santa Margarita River, and the Pacific Ocean – all waters of the United States.

A review of the CIWQS Spill Public Report – Summary Page identifies the "Total Number of SSO locations" as **52**, with **239,858** "Total Vol. of SSOs (gal)." Of this total volume, the District admits at least **227,134** gallons, or **94%** of the total, reached a surface water. Of the 239,858 gallons of sewage spilled, only 10,806 gallons were reported as having been recovered. The remaining volume was discharged into the environment posing both a nuisance pursuant to California Water Code § 13050(m) and an imminent and substantial endangerment to public health and the environment.

A review of the CIWQS SSO Reporting Program Database specifically identifies 12 recent SSOs reported as having reached a water of the United States, identified by Event ID numbers 814776, 811414, 855478, 849641, 843249, 856766, 810424, 814615, 822322, 816534, 842021, and 860362. Included in the 12 reported SSOs are the following incidents:

April 26, 2015 (Event ID# 814776) – an SSO estimated at 17,100 gallons occurred at 2800 Overland Trail (Coordinates 33.342475-117.240569). The reported cause of the spill was pipe structural problem/failure. The report indicates nearly all of the spill discharged into Ostrich Creek.

January 21, 2019 (Event ID # 855478) – an SSO estimated at 5,100 gallons occurred in the 1700 block of South Mission Road (Coordinates 33.361919-117.249856). The reported cause of the spill was pipe structural failure. Some 3,300 gallons discharged into Ostrich Creek.

December 13, 2014 (Event ID # 811414) – an SSO estimated at 13,700 gallons occurred at 2756 South Mission Road (Coordinates 33.342986 -117.240633). The reported cause of the spill was pipe structural problem/failure. All 13,700 gallons reached Ostrich Creek.

All of the above-identified discharges are violations of CWA § 301(a), 33 U.S.C. § 1311(a), as discharges of a pollutant (sewage) from a point source (sewer collection system) to a water of the United States without complying with any other sections of the Act. Further, these alleged discharges are violations of the District's NPDES Permit, which provides as follows:

Section III. Discharge Prohibitions:

A. The discharge of waste from the Facility not treated by a secondary treatment process and not in compliance with the effluent limitations specified in section IV.A of this Order, and/or to a location other than Discharge Point No. 001, unless specifically regulated by this Order or separate waste discharge requirements, is prohibited.

C. The discharge of wastes from the Facility during dry-weather months (May to October) in excess of a monthly average effluent flow of 2.7 MGD, and during wet-weather months (November to April) in excess of a monthly average effluent flow of 3.6 MGD is prohibited.

D. The District must comply with Ocean Plan Discharge Prohibitions, summarized in Attachment G, as a condition of this Order.

E. The District must comply with Discharge Prohibitions contained in Chapter 4 of the Basin Plan, summarized in Attachment G, as a condition of this Order.

ii. Inadequate Reporting of Discharges

a. Incomplete and Inaccurate SSO Reporting

Full and complete reporting of SSOs is essential to gauging their impact upon public health and the environment. The District's SSO Reports, which should reveal critical details about each of these SSOs, lack responses to specific questions that would identify the causes and the potential repairs ensuring these violations would not recur.

In addition, River Watch's expert believes many of the SSOs reported by the District as partially reaching a surface water did so in greater volume than stated. River Watch's expert also believes that a careful reading of the time when the SSO began, the time the District received notification of an SSO, the time of its response, and the time at which the SSO ended, too often appear as unlikely estimations. For example:

March 05, 2019 (Event ID #856766) – The spill start time and agency notification time are both reported as having occurred at 13:00. The operator arrival time is reported as five minutes later at 13:05, and the spill end time as ten minutes after the operator arrival at 13:15. The total volume of the spill is reported as 375 gallons, 325 of which are reported as having reached Fallbrook Creek.

February 27, 2016 (Event ID # 822322) – The spill start time is reported as 13:28, the agency notification time as 13:55 and the operator arrival time as 13:00, 55 minutes before the agency notification and 28 minutes before the spill start. The spill end time is estimated at 14:05, just ten minutes after the agency notification, but more than an hour after the reported operator arrival. The total volume of the spill reported is 30 gallons.

October 10, 2014 (Event ID # 810424) – The spill start time is reported as 20:45, agency notification time as ten minutes later at 20:55, and operator arrival time as fifteen minutes later at 21:10. The spill end time is reported as 21:05 five minutes before the operator arrival and just 20 minutes after the spill start. The total volume of the spill is reported as 250 gallons, 200 gallons of which discharged into a separate storm drain.

Given the unlikely accuracy of the times, intervals and spill volumes provided in these reports, it is difficult to consider the stated volumes as accurate. Without accurately reporting the spill start and end time, there is a danger that the duration and volume of a spill will be underestimated.

b. Failure to Warn

River Watch contends the District is understating the significance of the impacts of its CWA violations by failing to post health warning signs for the following incidents involving discharges reaching a surface water: Event ID numbers: 822322, 816534, 814615, 860362, 856766, 855478, 849641, 843249, 842021, and 810424.

iii. Failure to Mitigate Impacts

River Watch contends the District fails to adequately mitigate the impacts of its SSOs. The District is subject to the requirements of the *Statewide General Requirements for Sanitary Sewer Systems, Waste Discharge Requirements*, Order No. 2006-0003-DWQ ("Statewide WDR") governing the operation of sanitary sewer systems. The Statewide WDR requires the District to take all feasible steps, and perform necessary remedial actions following the occurrence of an SSO, including limiting the volume of waste discharged, terminating the discharge, and recovering as much of the wastewater as possible. Further remedial actions include intercepting and re-routing of wastewater flows, vacuum truck recovery of the SSO, cleanup of debris at the site, and modification of the collection system to prevent further SSOs at the site.

A critical remedial measure is the performance of adequate sampling to determine the nature and the impact of the release. As the District is underestimating SSOs which reach surface waters, River Watch contends the District is not conducting sampling on most SSOs.

The EPA's "*Report to Congress on the Impacts and Control of CSOs and SSOs*" (EPA, Office of Water (2004)) identifies SSOs as a major source of microbial pathogens and oxygen depleting substances. Numerous critical habitat areas exist within areas of the District's SSOs. Neighboring waterways include sensitive areas for the California gnatcatcher, Least Bell's vireo, southwestern willow flycatcher, arroyo toad, the arroyo chub, the southwestern pond turtle, the yellow-billed cuckoo, and the southern California Steelhead. River Watch finds no record of the District performing any analysis of the impact of its SSOs on critical habitat of protected species under the ESA, nor any evaluation of the measures needed to restore waterbodies designated as critical habitat from the impacts of SSOs.

B. Collection System Subsurface Discharges

It is a well-established fact that exfiltration caused by pipeline cracks and other structural defects in a sewer collection system result in discharges to adjacent surface waters via underground hydrological connections. River Watch contends untreated sewage is discharged from cracks, displaced joints, eroded segments, etc., in the District's sewer collection system into groundwater

hydrologically connected to surface waters including, but not limited to tributaries of the Santa Margarita River including Fallbrook Creek. Surface waters then become contaminated with pollutants including human pathogens. Chronic failures in the collection system pose a substantial threat to public health.

Studies tracing human markers specific to the human digestive system in surface waters adjacent to defective sewer lines in other systems have verified the contamination of the adjacent waters with untreated sewage. Evidence of exfiltration can also be supported by reviewing mass balance data, I/I data, video inspection, as well as testing of waterways adjacent to sewer lines for nutrients, human pathogens and other human markers such as caffeine. Any exfiltration found is a violation of the District's NPDES Permit, and therefore a violation of the CWA.

C. Violation of Effluent Limitations and Monitoring Requirements

A review of the District's Self-Monitoring Reports ("SMRs") identifies the following violations of effluent limitations imposed under the District's NPDES Permit:

1 violation - IV. Effluent Limitations and Discharge Specifications, A. Effluent Limitations and Performance Goals - Discharge Point No. 001; 1. Final Effluent Limitations; a. Table 7. Effluent Limitations at M-001 (Secondary Effluent from Wastewater Treatment Plant No. 01), Settleable Solids, Average Weekly limit is 1.5 ml/L.

(July 13, 2019) Settleable Solids Weekly Average limit is 1.5 ml/L and reported value was 1.7 ml/L at M-001. Event ID# 1062862.

3 violations - Effluent Limitations and Discharge Specifications, A. Effluent Limitations and Performance Goals - Discharge Point No. 001; 1. Final Effluent Limitations; a. Table 7. Effluent Limitations at M-001 (Secondary Effluent from Wastewater Treatment Plant No. 01); Settleable Solids, Average Weekly limit is 1.5 ml/L and Instantaneous Maximum limit is 3.0 ml/L.

(July 12, 2019) Settleable Solids Instantaneous Maximum limit is 3.0 ml/L and reported value was 5.0 ml/L at M-001. Event ID# 1062863.

(January 30, 2019) Settleable Solids Instantaneous Maximum limit is 3.0 ml/L and reported value was 20 ml/L at M-001. Event ID# 1056236.

(February 02, 2019) Settleable Solids 7-Day Average (Mean) limit is 1.5 ml/L and reported value was 3.6 ml/L. Event ID# 1057238.

D. Violations of Receiving Water Limitations and Impacts to Beneficial Uses

The Pacific Ocean, Santa Margarita River, Fallbrook Creek, Ostrich Creek, and the underlying groundwater have numerous beneficial uses as defined in the RWQCB-SD's Basin Plan. SSOs reaching these waters or their tributaries cause prohibited pollution by unreasonably affecting these beneficial uses.

Santa Margarita River and Watershed

The Santa Margarita River is the longest free-flowing river on the coast of southern California. The Santa Margarita River watershed provides one of the greatest remaining expanses of largely undisturbed riparian corridor. The River forms at the confluence of Temecula and Murrieta Creeks and flows southwest through the District and the Naval Weapons Station Seal Beach before terminating at the Pacific Ocean. Santa Margarita River Basin consists of 744 square miles of drainage area in both San Diego County and Riverside County and 949 miles of stream between the River and its tributaries. The Santa Margarita River Basin may be separated into two watersheds – “Upper Basin” and “Lower Basin.” The Upper Basin, located in Riverside County, is controlled by the drainage of Temecula and Murrieta Creeks. The Lower Basin is controlled by Santa Margarita River and contains major tributaries including De Luz, Sandia, and Fallbrook Creeks. Groundwater occurrence can be found in the alluvial basin below the confluence of the Santa Margarita River and De Luz Creek, and to a lesser extent, in the shallow alluvium upstream.

The riparian habitats found along this reach of the Santa Margarita River support a number of wildlife species and provide critical habitat for sensitive and endangered species in a habitat linkage between the Santa Ana Mountains and inland San Diego County. The River is designated as a high priority in the National Marine Fisheries Service’s Southern California Steelhead Recovery Plan. The greater watershed is of high ecological importance providing a diversity of terrestrial and aquatic habitats supporting 500 plant species, 236 bird species, 52 mammal species, 43 reptile species, 26 fish species, and 24 species of aquatic invertebrates.

Discharges in excess of receiving water and groundwater limitations reaching this watershed cause prohibited pollution by unreasonably affecting their beneficial uses of these waters. The NPDES Permit mandates that discharges “... shall not cause or contribute to the following in the Pacific Ocean [listing five limitations]” (NPDES Permit, Section V. Receiving Water Limitations, A. Surface Water Limitations). River Watch finds insufficient information in the public record demonstrating the District has monitored for and complied with these receiving water limitations. River Watch is understandably concerned regarding the effects of discharges to beneficial uses applicable to the Pacific Ocean and its tributaries, and the effects of both surface and underground SSOs on critical habitat in and around this diverse and sensitive ecosystem.

3. The Person or Persons Responsible for the Alleged Violation

The entity responsible for the alleged violations identified in this Notice is Fallbrook Public Utility District and those of its employees responsible for compliance with the CWA and with any applicable state and federal regulations and permits.

4. The Location of the Alleged Violation

The location of the various violations alleged in this Notice are identified in records created and/or maintained by or for the District which relate to its ownership and operation of the Facility and associated sewer collection system, as further described in this Notice.

The District was incorporated as a political subdivision of the State of California in 1922 and operates under the provision of the Public Utility Act, Division 7, of the Public Utility Code as adopted in 1953. The District constructs, operates and maintains facilities to supply water and sewer services to the town of Fallbrook, and water and reclaimed water to the surrounding residential and agricultural areas comprising approximately 28,199 acres.

Facility and Associated Sanitary Sewer System

The District provides municipal wastewater treatment services to a population of approximately 25,000, treating primarily residential and commercial wastewater. The District's sanitary sewer system consists of the water reclamation plant (design capacity of 2.7 million gallons per day average annual flow), 6 lift stations, 78 miles of collection piping and force-mains, and 18 miles of outfall piping from the Facility to the Pacific Ocean. Pipelines vary from 4 inches to 20 inches. Over one-third of all collection pipelines are over 50 years old, with some as old as 60 years old.

Wastewater treatment processes at the Facility include preliminary treatment by mechanical bar screening, aerated grit removal, primary sedimentation, aeration and secondary clarification (activated sludge treatment process), and chlorination. Sludge from the secondary treatment facilities is thickened, aerobically digested, and dewatered via centrifuge. Dewatered sludge is fed to a thermal dryer system to produce Class A EQ sewage sludge and disposed of via land application. If the dryer system is off-line, sewage sludge is dewatered via drying beds and hauled by a contractor to a land application site in Yuma, Arizona. Screenings collected from preliminary treatment processes are collected and disposed of at a landfill in San Diego County. Treated wastewater not distributed as recycled water is discharged to the land outfall pipeline which conveys effluent to the Oceanside Ocean Outfall which is owned and operated by the City of Oceanside at the La Salina Wastewater Treatment Plant. The District has a contractual agreement with the City of Oceanside to discharge up to 2.4 million gallons per day through the Oceanside Ocean Outfall on an annual average basis.

5. Reasonable Range of Dates During Which the Alleged Activity Occurred

The range of dates covered by this Notice is October 1, 2014 through October 1, 2019. River Watch may from time to time update this Notice to include violations of the CWA by the District which occur during and after the range of dates currently covered. Some violations are continuous, and therefore each day constitutes a violation.

6. The Full Name, Address, and Telephone Number of the Person Giving Notice

The entity giving notice is California River Watch, an Internal Revenue Code § 501(c)(3) nonprofit, public benefit corporation duly organized under the laws of the State of California. Its mailing address is 290 South Main Street, #817, Sebastopol, California, 95472. River Watch is dedicated to protecting, enhancing, and helping to restore the surface waters and groundwater of California including coastal waters, rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and educating the public concerning environmental issues

associated with these environs. River Watch may be contacted via email: US@ncriverwatch.org, or through its attorneys. River Watch has retained legal counsel with respect to the issues raised in this Notice. All communications should be directed to the counsel identified below:

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RECOMMENDED REMEDIAL MEASURES

River Watch looks forward to meeting with the District's staff to tailor remedial measures to the specific operation of the Facility and associated sewage collection system.

CONCLUSION

The violations set forth in this Notice affect the health and enjoyment of members of River Watch who reside and recreate in the affected community and may use the affected watershed for recreation, fishing, horseback riding, hiking, photography or nature walks. Their health, use and enjoyment of this natural resource is specifically impaired by the District's alleged violations of the CWA as set forth in this Notice.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person", including a governmental instrumentality or agency, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), 33 U.S.C. § 1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$54,833.00 per day/per violation for all violations pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1– 19.4. River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of CWA to obtain the relief provided for under the law.

The CWA specifically provides a **60-day** "notice period" to promote resolution of disputes. River Watch strongly encourages the District to contact counsel for River Watch within **20 days** after receipt of this Notice to initiate a discussion regarding the allegations detailed herein. In the absence of productive discussions to resolve this dispute, River Watch will have cause to file a citizen's suit under CWA § 505(a) when the 60-day notice period ends.

Very truly yours,



Jack Silver

JS:lm

Service List

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